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Report of the Working Group on Arbitrary Detention

Note by the Secretariat

In 2017, the Working Group on Arbitrary Detention, under its regular procedure, adopted 94 opinions concerning the detention of 225 persons in 48 countries. It also transmitted 98 urgent appeals to 45 Governments concerning 311 individuals, and 41 letters of allegations and other letters to 32 Governments. States informed the Working Group that they had taken measures to remedy the situations of detainees, and in an increasing number of cases the detainees were released. The Working Group is grateful to those Governments that responded to its appeals and took steps to provide it with the information requested on the situation of detainees.

The Working Group engaged in continuous dialogue with countries that it visited, particularly in connection with the implementation of its recommendations. In 2017, the Working Group undertook two country visits, to Argentina and Sri Lanka. The reports on those visits are contained in addenda to the present report (A/HRC/39/45/Add.1 and A/HRC/39/45/Add.2, respectively).

In the present report, the Working Group considers the issue of consular assistance and diplomatic protection for persons deprived of liberty. It also examines the linkages between arbitrary detention and instances of torture and ill-treatment.

In its recommendations, the Working Group calls for increased cooperation from States, especially in relation to its requests for country visits, in relation to their responses to its urgent appeals and communications, and for the enforcement of its opinions, with a view to preventing and ending arbitrary detention. Furthermore, it calls upon the States concerned to take appropriate measures to prevent acts of reprisal against individuals who were the subject of an urgent appeal or opinion or who gave effect to a recommendation of the Working Group.

In November 2017, the Working Group adopted its revised deliberation No. 5 on deprivation of liberty of migrants, which is included in an annex to the present report.

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Report of the Working Group on Arbitrary Detention*

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* The annex is being circulated without formal editing, in English.

I. Introduction

1. The Working Group on Arbitrary Detention was established by the Commission on Human Rights in its resolution 1991/42. It was entrusted with the investigation of cases of alleged arbitrary deprivation of liberty, according to the standards set forth in the Universal Declaration of Human Rights and the relevant international instruments accepted by the States concerned. The mandate of the Working Group was clarified and extended by the Commission in its resolution 1997/50 to cover the issue of administrative custody of asylum seekers and immigrants. Pursuant to General Assembly resolution 60/251 and Human Rights Council decision 1/102, the Council assumed the mandate of the Commission. The mandate of the Working Group was most recently extended for a three-year period in Council resolution 33/30 of 30 September 2016.

2. During the period from 1 January to 31 December 2017, the Working Group was composed of Sètondji Roland Jean-Baptiste Adjovi (Benin), José Antonio Guevara Bermúdez (Mexico), Seong-Phil Hong (Republic of Korea), Elina Steinerte (Latvia) and Leigh Toomey (Australia).

3. Mr. Adjovi served as Chair-Rapporteur of the Working Group from April 2016 to April 2017, and Mr. Guevara Bermúdez and Ms. Toomey as Vice-Chairs. At the seventy-eighth session of the Working Group, in April 2017, Mr. Guevara Bermúdez was elected as Chair-Rapporteur and Ms. Steinerte and Ms. Toomey as Vice-Chairs.

II. Activities of the Working Group in 2017

4. During the period from 1 January to 31 December 2017, the Working Group held its seventy-eighth, seventy-ninth and eightieth sessions. The Working Group also undertook two country visits to Argentina (8–18 May 2017) and Sri Lanka (4–15 December 2017) (see A/HRC/39/45/Add.1 and A/HRC/39/45/Add.2 respectively).

5. In order to facilitate outreach and information-sharing, the Working Group met with a group of non-governmental organizations in the context of its seventy-ninth session.

6. At its eightieth session, in November 2017, the Working Group adopted its revised deliberation No. 5 on deprivation of liberty of migrants, which is included in an annex to the present report. The document updates a deliberation issued in 1999 to tackle the situation of immigrants and asylum seekers held in prolonged custody without the possibility of administrative or judicial remedy. The new deliberation reflects changes in international law and the Working Group's jurisprudence since then, as well as concern over the growing use of detention in the context of migration.

A. Handling of communications addressed to the Working Group during 2017

1. Communications transmitted to Governments

7. At its seventy-eighth, seventy-ninth and eightieth sessions, the Working Group adopted a total of 94 opinions concerning 225 persons in 48 countries (see the table below).

2. Opinions of the Working Group

8. Pursuant to its methods of work (A/HRC/36/38), in addressing its opinions to Governments, the Working Group drew their attention to Commission on Human Rights resolutions 1997/50 and 2003/31 and Human Rights Council resolutions 6/4, 24/7 and 33/30, by which those bodies requested them to take account of the Working Group's opinions and, where necessary, to take appropriate steps to remedy the situation of persons arbitrarily deprived of their liberty and to inform the Working Group of the steps they have taken. At the expiry of a 48-hour deadline, the opinions were transmitted to the relevant sources.

Opinions adopted at the seventy-eighth, seventy-ninth and eightieth sessions of the Working Group

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
1/2017	Turkey	No[1]	Rebii Metin Görgeç	Detention arbitrary, categories I and III	Following the release of Mr. Görgeç, no further action taken to implement the opinion, information from the Government and the source
2/2017	Bhutan and India	Bhutan (yes) India (no)	Loknath Acharya	Case kept pending without prejudice to the receipt of further information (paragraph 17 (c) of methods of work)	N/A
3/2017	Israel	No	A minor (whose name is known by the Working Group)	Detention arbitrary, categories III and V	-
4/2017	China	No	Tsegon Gyal	Detention arbitrary, categories I, III and V	No action taken to implement the opinion, information from the source
5/2017	China	Yes	Huang Wenxun, Yuan Bing and Yuan Xiaohua	Detention arbitrary, categories I, II and III	-
6/2017	Libya	No	Yousif Abdul Salam Faraj Ahbara, Abubakr Hamad Ali Dayoum, Masoud Abdel Azeim al-Shafei, Abdu Rabo al-Sharief Abdu Rabu al-Mabrouk, Abdul Rahman Abdul Jalil Mohammed al-Firjani,	Detention arbitrary, categories I and III	-

[1] The Government of Turkey submitted a late response in this case.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
			Ahmed Mahmoud Mohamed al-Farisi and Abdalla Faraj Abdalla Aburas Ali		
7/2017	Islamic Republic of Iran	No	Kamal Foroughi	Detention arbitrary, categories I, III and V	-
8/2017	Pakistan	No	Hassan Zafar Arif	Detention arbitrary, categories I, II, III and V	Mr. Arif allegedly died in suspicious circumstances after his release, information from the source
9/2017	Islamic Republic of Iran	Yes	Hana Aghighian, Soudabeh Mehdinejad Behnamiri, Kamelia Bideli, Navid Moallemi, Houshmand Dehghan, Maryam Dehghan, Sheida Ghoddousi, Behnam Hasani, Bita Hedayati, Mona Amri Hesari, Nazi Khalkhali, Hena Koushk-Baghi, Tina Mowhebati, Mitra Nouri, Roufia Pakzadan, Shiva Rowhani, Shohreh Samimi, Shahnam Jazbani, Pouneh Sanaie, Vesagh Sanaie, Parisa Shahidi, Parivash Shojaei, Farah Tebyanian and Mojdeh Zhohori	Detention arbitrary, categories II, III and V	-
10/2017	Saudi Arabia	No	Salim Abdullah Hussain Abu Abdullah	Detention arbitrary, categories I and III	No action taken to implement the opinion, information from the

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
					Government and the source[2]
11/2017	Morocco	Yes	Salah Eddine Bassir	Detention arbitrary, categories II, III and V	-
12/2017	Cuba	Yes	Danilo Maldonado Machado	Detention arbitrary, categories I and III	Following the release of Mr. Maldonado Machado, no further action taken to implement the opinion, information from the Government and the source
13/2017	Republic of Korea	Yes	Twelve female defectors of the Democratic People's Republic of Korea (whose names are known by the Working Group)	Case filed (paragraph 17 (a) of methods of work)	N/A
14/2017	Cameroon	Yes	Cornelius Fonya	Detention arbitrary, categories I, II, III and V	No action taken to implement the opinion, information from the source
15/2017	Maldives	Yes	Ahmed Mahloof	Detention arbitrary, categories II, III and V	Mr. Mahloof has been released and no further action has been taken to implement the opinion, information from the Government
16/2017	Kazakhstan	Yes	Max Bokayev and Talgat Ayanov	Detention arbitrary, categories II, III and V	Following appeals to all three instances, sentences were upheld.

[2] See the section on reprisals.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
					No action taken to implement the opinion, information from the Government and the source
17/2017	Jordan	Yes	Ghassan Mohammed Salim Duar	Detention arbitrary, categories I and III	-
18/2017	Bolivarian Republic of Venezuela	Yes	Yon Alexander Goicoechea Lara	Detention arbitrary, categories I, III and V	Mr. Lara has been released, information from the Government
19/2017	Colombia	No	Pedro César Pestana Rojas and Antonio de Jesús Martínez Hernández	Detention arbitrary, category I	No action taken to implement the opinion, information from the Government and the source
20/2017	Kuwait	Yes	Musallam Mohamed Hamad al-Barrak	Detention arbitrary, category II	Following the release of Mr. Al-Barrak, no further action taken to implement the opinion, information from the Government and the source
21/2017	United Arab Emirates	Yes	Mohamad Ismat Mohamad Shaker Az	Detention arbitrary, categories I, II and III	No action taken to implement the opinion, information from the source[3]
22/2017	Republic of Korea	Yes	Sang-gyun Han and Young-joo Lee	Detention arbitrary, category II	Mr. Han was subsequently convicted and then released, and Ms. Lee has been arrested, information from the Government

[3] See the section on reprisals.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
					and the source
23/2017	Mexico	No	Pablo López Alavez	Detention arbitrary, categories I, II, III and V	No action taken to implement the opinion, information from the source
24/2017	Mexico	No	Mario Olivera Osorio	Detention arbitrary, categories I, II and III	Mr. Olivera Osorio was acquitted and released. Investigations into torture allegations ongoing, information from the Government
25/2017	Congo	No	Jean-Claude Mbango, Samba Mountou Loukossi and Ismaël Chrislain Mabarry	Detention arbitrary, categories I and III	The individuals remain in detention and trials are ongoing, information from the source
26/2017	Viet Nam	Yes	Nguyen Van Dai	Detention arbitrary, categories I, II, III and V	Mr. Van Dai has been released and granted asylum in Germany, information from the source
27/2017	Viet Nam	Yes	Nguyen Ngoc Nhu Quynh	Detention arbitrary, categories II and III	Appeal dismissed and Ms. Quynh remains in prison, information from the Government and the source[4]
28/2015	Australia	No[5]	Abdalrahman Hussein	Detention arbitrary, categories II, IV and V	No action taken to implement the opinion, information from the Government and the source

[4] See the section on reprisals.

[5] The Government of Australia submitted a late response in this case.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
29/2017	Uzbekistan	No[6]	Aramais Avakyan	Detention arbitrary, categories I, III and V	No action taken to implement the opinion, information from the source
30/2017	Egypt	Yes	Mohamed Serria	Detention arbitrary, categories I and III	Following the release of Mr. Serria, no further action taken to implement the opinion, information from the Government and the source
31/2017	Israel	No	Omar Nazzal	Detention arbitrary, categories III and V	-
32/2017	Iraq	No[7]	Salih Mohammed Salih Mansour al Dulaimi	Detention arbitrary, categories I and III	-
33/2017	Iraq	Yes	Rasha Nemer Jaafar al-Husseini, Ghassan Abbas Jasim al-Kubaisi, Omar Sameer Jawad al-Noaemy, Uday Ghazy Amin al-Ithawi, Yasser Saadi Hassoun al-Zubaidi, Osama Hamid Hammoud al-Halbusi, Asim Jabbar Aath Fayyad al-Mashhadani, Natek Abdullah Ibrahim al-Aqidi, Ahmed Shawki Saoud al-Kubaisi, Hekmat Nasser Hamad Dahi al-	Detention arbitrary, categories I, III and V	Ms. Al-Husseini has been released and all other individuals remain in detention. No further action taken to implement the opinion. Death sentences in relation to some of the individuals upheld upon appeal, information from the Government and the source

[6] The Government of Uzbekistan submitted a late response in this case.

[7] The Government of Iraq submitted a late response in this case.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
			Obeidi, Sohail Akram Salman al-Gehiche, Ali Mahmoud al-Dulaimi, Marwan Mokhayber Ahmed al-Dulaimi, Amjad Hamid Ozgar M'hidi al-Dulaimi, Arshad Hamid Ozgar M'hidi al-Dulaimi, Raad Hammoud Salloum Hussein al-Dulaimi, Ahmed Shawki Abdel Karim Mohammed al-Sharabati, Mohammed Hussein Obaid Hussein al-Janabi and Qais Qader Mohammad Ali Abbas al-Bayati		
34/2017	Algeria	Yes	Kamel Eddine Fekhar	Detention arbitrary, categories II and III	Following the release of Mr. Fekhar, no further action taken to implement the opinion, information from the Government and the source
35/2017	Mauritania	Yes	Mohammed Shaikh Ould Mohammed Ould Mkhaitir	Detention arbitrary, categories II and III	-
36/2017	Iraq	Yes	Ahmad Suleiman Jami Muhanna al-Alwani	Detention arbitrary, categories I, II, III and V	-
37/2017	Bolivarian Republic of Venezuela	Yes	Braulio Jatar	Detention arbitrary, categories I, II and III	Mr. Jatar has been transferred to house arrest, information from the Government

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
38/2017	Turkey	Yes	Kursat Çevik	Detention arbitrary, categories I and III	No action taken to implement the opinion. Mr. Çevik was subsequently convicted, information from the Government and the source[8]
39/2017	Burkina Faso	Yes	Djibril Bassolé	Detention arbitrary, category III	Mr. Bassolé has been transferred to house arrest, information from the Government and the source
40/2017	Cameroon	Yes	Yves Michel Fotso	Detention not arbitrary	N/A
41/2017	Turkey	Yes	Akin Atalay, Önder Çelik, Turhan Günay, Mustafa Kemal Güngör, Kadri Gürsel, Hakan Kara, Haci Musa Kart, Murat Sabuncu, Bülent Utku and Güray Tekin Öz	Detention arbitrary, categories II and III	Final verdicts have been announced for nine of the individuals, and one was acquitted. All nine individuals have been released pending the appeal to the Supreme Court. No further action taken to implement the opinion, information from the Government and the source
42/2017	Australia	Yes	Mohammad Naim Amiri	Detention arbitrary, categories II, IV and V	No action taken to implement the opinion, information from the Government and the source
43/2017	Tajikistan	Yes	Daniil Islamov	Detention arbitrary, categories I, II, III and	Mr. Islamov has been released, following the completion of his

[8] See the section on reprisals.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
				V	sentence. No further action taken to implement the opinion, information from the source
44/2017	Israel	No	Ali Abdul Rahman Mahmoud Jaradat	Detention arbitrary, categories III and V	-
45/2017	Bangladesh	No	Hasnat Karim	Detention arbitrary, categories I and III	No action taken to implement the opinion, information from the source
46/2017	Jordan	Yes	Hatem Al Darawsheh	Detention arbitrary, categories I and III	Mr. Al Darawsheh is serving his three-year prison term, information from the Government
47/2017	United Arab Emirates	Yes	Ahmad Ali Mekkaoui	Detention arbitrary, categories I and III	Mr. Mekkaoui is currently serving his sentence, information from the Government
48/2017	Islamic Republic of Iran	No	Narges Mohammadi	Detention arbitrary, categories II, III and V	-
49/2017	Islamic Republic of Iran	No	Siamak Namazi and Mohammed Baquer Namazi	Detention arbitrary, categories III and V	The individuals remain in detention, information from the Government
50/2017	Malaysia	Yes	Maria Chin Abdullah	Detention arbitrary, categories II, III and V	Following the release of Ms. Chin, no further action taken to implement the opinion, information from the Government and the source
51/2017	Thailand	No	Sasiphimon	Detention arbitrary,	-

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
			Patomwongfangam	categories II and III	
52/2017	Bolivarian Republic of Venezuela	No	Gilbert Alexander Caro Alfonzo	Detention arbitrary, categories III and V	-
53/2017	Lebanon	Yes	Nizar Bou Nasr Eddine	Detention arbitrary, categories I and III	Following the release of Mr. Eddine, no further action taken to implement the opinion, information from the Government
54/2017	Burundi	No	Elvis Arakaza	Detention arbitrary, categories I, II and III	No action taken to implement the opinion, information from the source
55/2017	Cuba	Yes	Manuel Rodríguez Alonso	Detention arbitrary, categories I and II	No action taken to implement the opinion, information from the Government and the source
56/2017	Thailand	Yes	Thiansutham Suthijitseranee	Detention arbitrary, categories I, II and III	-
57/2017	Uganda	No	Stella Nyanzi	Detention arbitrary, categories I, II and III	Ms. Nyanzi has been released on bail, but no further action taken to implement the opinion, information from the Government and the source
58/2017	United Arab Emirates	Yes	Taysir Hasan Mahmoud Salman	Detention arbitrary, categories I, II and III	-
59/2017	China	Yes	Hu Shigen, Xie Yang and Zhou Shifeng	Detention arbitrary, categories II and III	Messrs. Shigen and Shifeng remain in detention, and Mr. Yang has been released on bail under tight

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
					police control at his home, information from the source
60/2017	Ethiopia	No	Andualem Aragie Walle	Detention arbitrary, categories I, II, III and V	Mr. Walle was released as part of a mass pardon, rearrested and then released again, information from the source
61/2017	Lao People's Democratic Republic	Yes	Lodkham Thammavong, Somphone Phimmasone and Soukan Chaithad	Detention arbitrary, categories I, II and III	-
62/2017	Kazakhstan	Yes	Teymur Akhmedov	Detention arbitrary, categories II, III and V	Following a presidential pardon, Mr. Akhmedov has been released, information from the Government and the source
63/2017	Saudi Arabia	Yes	Jaber bin Saleh Hamdan Aal Suleiman al-Amri	Detention arbitrary, categories I, II and III	No action taken to implement the opinion, information from the Government
64/2017	Cuba	Yes	Julio Alfredo Ferrer Tamayo	Detention arbitrary, categories I and II	Mr. Tamayo has been released, under strict restrictions, information from the Government and the source
65/2017	Mexico	Yes	Rubén Sarabia Sánchez	Detention arbitrary, categories I and V	Mr. Sánchez has been released, information from the Government and the source. Legislative developments have been undertaken, including the adoption

Opinion No.	State(s)	Government reply	Person(s) concerned	Opinion	Follow-up information received
					of a law against torture, information from the Government
66/2017	Mexico	Yes	Daniel García Rodríguez and Reyes Alpízar Ortiz	Detention arbitrary, categories I and III	No action taken to implement the opinion, information from the source
67/2017	Malaysia	No	Adilur Rahman Khan	Detention arbitrary, categories I, II and V	No action taken to implement the opinion, as all actions carried out in accordance with domestic law, information from the Government
68/2017	Trinidad and Tobago	No	Zaheer Seepersad	Detention arbitrary, categories I and V	-[9]
69/2017	China	Yes	Tashi Wangchuk	Detention arbitrary, categories I, II and III	Mr. Wangchuk has been convicted of "inciting separatism", information from the source
70/2017	Turkmenistan	Yes	Mekan Yagmyrov, Dovletgeldi Orazov, Gurbanmuhammet Godekov, Shatlyk Durdygylyjov, Mekan Godekov, Nurmuhammet Orazov, Merdan Gylycdurdyyev, Guvanch Gazakbayev, Sapardurdy Yagshybayev, Myrat	Detention arbitrary, categories I, II and III	-

[9] See the section on reprisals.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
			Gullyyev, Resulberdi Atageldiyev, Dovletgeldi Amangeldiyev, Dovletmyrat Atayev, Annamammet Orazmammedov, Tachmuhamet Orazmuhamedov, Batyr Atayev, Ovezdurdy Melayev and Saparmyrat Ibrayymov		
71/2017	Australia	Yes	Said Imasi	Detention arbitrary, categories II, IV and V	No action taken to implement the opinion, information from the Government
72/2017	United States of America	No	Marcos Antonio Aguilar-Rodríguez	Detention arbitrary, categories II, IV and V	-
73/2017	Argentina	Yes	María Laura Pace and Jorge Oscar Petrone	Detention not arbitrary	N/A
74/2017	Democratic Republic of the Congo	No	Franck Diongo Shamba	Detention arbitrary, categories I, II, III and V	-
75/2017	Viet Nam	Yes	Tran Thi Nga	Detention arbitrary, categories I, II, III and V	-
76/2017	United Arab Emirates	Yes	Nasser Bin Ghaith	Detention arbitrary, categories I, II and III	-
77/2017	Colombia	No	Beatriz del Rosario Rivero Martínez	Detention arbitrary, categories II and III	Ms. Rivero has been conditionally released for a probation period of 25 months, information from the Government

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
78/2017	Egypt	No	A minor (whose name is known by the Working Group), Assem Adawy, Ameen Mashaly, Omar Al Sagheer, Ahmed Al Khateeb, Sherine Bekhit, Ahmed Sayed Ahmed, Mahmoud Al Barbery, Ahmed Mabrouk, Ahmed Shawky Amasha, Abdelrehim Mohamed, Bassma Rabi', Adel Al Haddad, Reem Gobara, Omar Ali, Mahmoud Ahmed Abou-Leil, Hanane Othman and Mohamed Dessouky	Detention arbitrary, categories I, II (in relation to Mr. Adawy, Ms. Bekhit, Mr. Amasha, Ms. Gobara, Ms. Othman, Mr. Ahmed, Mr. Al Sagheer, Mr. Sayed Ahmed, Mr. Al Barbery, Mr. Mabrouk, Mr. Mohamed, Ms. Rabi', Mr. Al Haddad, Mr. Ali and Mr. Dessouky) and III	Mr. Mabrouk has been released, no information provided about two of the individuals and the rest remain in pretrial detention, information from the Government
79/2017	Viet Nam	Yes	Can Thi Theu	Detention arbitrary, categories I, II, III and V	-
80/2017	Democratic People's Republic of Korea	Yes	Il Joo, Cheol Yong Kim, Eun Ho Kim, Kwang Ho Kim and Seong Min Yoon	Detention arbitrary, categories I and II	-
81/2017	Democratic People's Republic of Korea and China	Democratic People's Republic of Korea (no) China (yes)	Mi Sook Kang and Ho Seok Kim	Detention arbitrary (with regard to the Democratic People's Republic of Korea, categories I and III; and with regard to China, categories I and II)	-
82/2017	Zimbabwe	No	Evan Mawarire	Detention arbitrary, categories I and II	Mr. Mawarire was released one week after his arrest and

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
					subsequently acquitted of all charges, information from the source
83/2017	Egypt	Yes	Mahmoud Hussein Gommaa Ali	Detention arbitrary, categories I, II, III and V	-
84/2017	Bolivarian Republic of Venezuela	Yes	Roberto Antonio Picón Herrera	Detention arbitrary, categories I, II, III and V	-
85/2017	Rwanda	No[10]	Franck Kanyambo Rusagara, Tom Byabagamba and François Kabayiza	Detention arbitrary, (with regard to Messrs. Rusagara and Byabagamba, categories I, II and III; and with regard to Mr. Kabayiza, category III)	-
86/2017	Israel	No	Salem Badi Dardasawi	Detention arbitrary, categories I, III and V	-
87/2017	Bolivarian Republic of Venezuela	Yes	Marcelo Eduardo Crovato Sarabia	Detention arbitrary, categories I, II, III and V	-
88/2017	India	No	Thirumurugan Gandhi	Detention arbitrary, categories I, II, III and V	-
89/2017	United States of America	Yes	Ammar al Baluchi	Detention arbitrary, categories I, III and V	-
90/2017	Mauritania	No	Amadou Tidjani Diop, Ahmed Hamar Vall, Hamady Lehbouss, Mohamed Daty, Balla	Detention arbitrary, categories I, II and III	Three of the individuals have been acquitted and released, one was released after serving

[10] The Government of Rwanda submitted a late response in this case.

Opinion No.	*State(s)*	*Government reply*	*Person(s) concerned*	*Opinion*	*Follow-up information received*
			Touré, Moussa Biram, Khatry Rahel, Mohamed Jaroulah, Abdallahi Matala Saleck and Abdallah Abou Diop		his sentence, and the others were convicted and appeals are ongoing, information from the Government
91/2017	Maldives	Yes	Imran Abdullah	Detention arbitrary, categories I, II, III and V	-
92/2017	Islamic Republic of Iran	No	Ahmadreza Djalali	Detention arbitrary, categories I and III	No action taken to implement the opinion, information from the Government
93/2017	Saudi Arabia	Yes	Muhammed Al Saqr	Detention arbitrary, categories I and III	No action taken to implement the opinion, information from the Government
94/2017	Oman	Yes	Yousuf bin Khamis bin Moosa al Balouchi	Detention arbitrary, categories I, II and III	Following the release of Mr. Al Balouchi, no further action taken to implement the opinion, information from the Government

3. Follow-up procedure

9. The table above shows information received by the Working Group as at 21 June 2018, pursuant to the follow-up procedure adopted by the Working Group at its seventy-sixth session, held in August 2016. The Working Group is encouraged that a response was received from the source and/or the Government in more than 50 per cent of cases in which follow-up information was sought, and it urges both sources and Governments to keep it updated on the implementation of its opinions.

10. If the Working Group, in accordance with its methods of work and while examining the allegations of violations of human rights in the above opinions, has considered that the allegations could also be dealt with by another special procedure, it has referred such allegations to the relevant working group or special rapporteur within whose competence they fall, for appropriate action.[1] During 2017, the Working Group made 119 referrals to other special procedure mandate holders in relation to the 94 opinions adopted.

4. Release of the subjects of the Working Group's opinions

11. The Working Group notes with appreciation the information received on the release of the following subjects of its opinions during the period from 1 January to 31 December 2017:

- Akzam Turgonov (opinion No. 53/2011, Uzbekistan)
- Danilo Maldonado Machado (opinion No. 12/2017, Cuba)
- Ahmed Mahloof (opinion No. 15/2017, Maldives)
- Yon Alexander Goicoechea Lara (opinion No. 18/2017, Bolivarian Republic of Venezuela)
- Musallam Mohamed Hamad Al Barrak (opinion No. 20/2017, Kuwait)
- Mario Olivera Osorio (opinion No. 24/2017, Mexico)
- Mohamed Serria (opinion No. 30/2017, Egypt)
- Omar Nazzal (opinion No. 31/2017, Israel)
- Rasha Nemer Jaafar al-Husseini (opinion No. 33/2017, Iraq)
- Kamel Eddine Fekhar (opinion No. 34/2017, Algeria)
- Önder Celik (opinion No. 41/2017, Turkey)
- Turhan Günay (opinion No. 41/2017, Turkey)
- Mustafa Kemal Güngör (opinion No. 41/2017, Turkey)
- Güray Tekin Öz (opinion No. 41/2017, Turkey)
- Hakan Kara (opinion No. 41/2017, Turkey)
- Haci Musa Kart (opinion No. 41/2017, Turkey)
- Bülent Utku (opinion No. 41/2017, Turkey)
- Kadri Gürsel (opinion No. 41/2017, Turkey)
- Ali Abdul Rahman Mahmoud Jaradat (opinion No. 44/2017, Israel)
- Maria Chin Abdullah (opinion No. 50/2017, Malaysia)
- Nizar Bou Nasr Eddine (opinion No. 53/2017, Lebanon)
- Stella Nyanzi (opinion No. 57/2017, Uganda)
- Julio Ferrer Tamayo (opinion No. 64/2017, Cuba)

[1] See A/HRC/36/38, para. 33 (a).

- Rubén Sarabia Sánchez (opinion No. 65/2017, Mexico)
- Adilur Rahman Khan (opinion No. 67/2017, Malaysia)
- Zaheer Seepersad (opinion No. 68/2017, Trinidad and Tobago)
- Marcos Antonio Aguilar-Rodríguez (opinion No. 72/2017, United States of America)
- Ewan Mawarire (opinion No. 82/2017, Zimbabwe)
- Roberto Antonio Picón Herrera (opinion No. 84/2017, Bolivarian Republic of Venezuela)
- Thirumurugan Gandhi (opinion No. 38/2017, India)
- Yousuf bin Khamis bin Moosa al Balouchi (opinion No. 94/2017, Oman)

12. The Working Group expresses its gratitude to those Governments that undertook positive actions and released detainees that had been subjects of its opinions. However, it also expresses regret that various Member States have not cooperated in implementing the opinions and urges those States to do so as a matter of urgency. The Working Group recalls that the continued detention of those individuals is a continued violation of their right to liberty, under article 9 of the Universal Declaration of Human Rights and article 9 of the International Covenant on Civil and Political Rights.

5. Reactions from Governments concerning previous opinions

13. During the reporting period, the Working Group received several reactions from Governments concerning its previous opinions.

14. In its notes verbales of 17 January and 21 February 2017, the Government of Argentina submitted further updates on the judicial process concerning Milagro Sala (opinion No. 31/2016).

15. In a note verbale dated 27 January 2017, the Government of Cameroon informed the Working Group that it took note of its opinion No. 22/2016 concerning Marafa Hamidou Yaya. However, it expressed concern at the imbalance between the way that information from the Government and information from the source were presented in the opinion, both in terms of form and substance (opinion No. 22/2016).

16. On 6 February 2017, in response to the joint urgent appeal of 6 October 2016 (IRN 26/2016), the Government of the Islamic Republic of Iran provided updates on the case of Nazanin Zaghari-Ratcliffe (opinion No. 28/2016).

17. In its note verbale of 23 February 2017, the Government of Viet Nam responded to the joint urgent appeal dated 5 December 2016 (VNM 10/2016) concerning the situation of Hung Linh Nguyen. The Government denied the accuracy of allegations transmitted by the Working Group and other special procedure mandate holders, both in terms of the investigation, trial and sentencing of Mr. Nguyen and his alleged restricted access to medical care (opinion No. 46/2015).

18. The Government of Turkey, in its note verbale of 1 May 2017, submitted a late response in the case of Rebii Metin Görgeç (opinion No. 1/2017).

19. In its note verbale of 4 May 2017, the Government of Uzbekistan submitted a late response in the case of Aramais Avakyan (opinion No. 29/2017).

20. On 5 May 2017, the Permanent Mission of New Zealand transmitted a note verbale to the Working Group advising that the Government of New Zealand was not aware of the Working Group's consideration of the case of Mr. A, and therefore did not provide its views on it (opinion No. 21/2015).

21. In a note verbale dated 9 May 2017, the Government of Australia submitted a late response in the case of Abdalrahman Hussein (opinion No. 28/2017).

22. In a note verbale of 23 June 2017, the Government of Iraq submitted a late response in the case of Salih Mohammed Salih Mansour al Dulaimi (opinion No. 32/2017).

23. The Government of Egypt, in its note verbale dated 3 October 2017, conveyed information provided by the Ministry of Justice in relation to Omar Abdulrahman Ahmed Youssef Mabrouk. Mr. Mabrouk remains in detention and his case is before the judiciary (opinion No. 60/2016).

24. In a note verbale dated 19 December 2017, the Government of the Islamic Republic of Iran advised that Zainab Jalalian was currently serving her life sentence in Khoy Prison and that her legal rights were fully being respected (opinion No. 1/2016).

6. Requests for review of opinions adopted

25. The Working Group considered the requests for review of the following opinions:

- Opinion No. 38/2013 (Cameroon), concerning Michel Thierry Atangana Abega, adopted on 13 November 2013
- Opinion No. 28/2016 (Islamic Republic of Iran), concerning Nazarin Zaghari-Ratcliffe, adopted on 23 August 2016
- Opinion No. 57/2016 (Peru), concerning Edith Vilma Huaman, adopted on 25 November 2016
- Opinion No. 39/2017 (Burkina Faso), concerning Djibril Yipene Bassole, adopted on 28 April 2017

26. After examining the requests for review in relation to its opinions Nos. 28/2016, 57/2016 and 39/2017, the Working Group decided to maintain those opinions, on the basis that none of the requests met the criteria outlined in paragraph 21 of its methods of work. The request for review of opinion No. 38/2013 is still under consideration by the Working Group.

7. Reprisal against subjects of the opinions of the Working Group

27. The Working Group notes with grave concern that it continues to receive information, including in the context of its follow-up procedure, on reprisals suffered by individuals who have been the subject of an urgent appeal or an opinion or whose cases have given effect to a recommendation of the Working Group. Such acts of alleged reprisal include placement in solitary confinement, harsh prison conditions, threats and harassment against the individual and/or his or her family members, and accusatory articles in the pro-government media. With this in mind, the Working Group, at its seventy-eighth session, appointed a focal point on reprisals.

28. In relation to the present reporting period, the Working Group has received allegations of reprisals against Salim Abdullah Hussain Abu Abdullah (opinion No. 10/2017, Saudi Arabia), Mohamad Ismat Mohamad Shaker Az (opinion No. 21/2017, United Arab Emirates), Nguyen Ngoc Nhu Quynh (opinion No. 27/2017, Viet Nam), Kursat Çevik (opinion No. 38/2017, Turkey) and Zaheer Seepersad (opinion No. 68/2017, Trinidad and Tobago).

29. In addition, the Working Group remains concerned regarding the continued detention under house arrest of María Lourdes Afiuni Mora, the subject of its opinion No. 20/2010. The Working Group considers her detention as a measure of reprisal, and it reiterates its calls on the Government of the Bolivarian Republic of Venezuela to release her immediately and provide her with effective and adequate reparations.

30. The Working Group has decided to refer reported cases of reprisal, as appropriate and when such referrals have not already been made, to the Assistant Secretary-General for Human Rights, who is leading the efforts of the United Nations to put an end to intimidation and reprisals against those cooperating with it on human rights.

31. In its resolutions 12/2 and 24/24, the Human Rights Council called upon Governments to prevent and refrain from all acts of intimidation or reprisal against those who seek to cooperate or have cooperated with the United Nations and its representatives and mechanisms in the field of human rights, or who have provided testimony or

information to them. The Working Group encourages Member States to take all measures possible to guard against reprisals.

8. Urgent appeals

32. During the period from 1 January to 31 December 2017, the Working Group sent 98 urgent appeals to 45 Governments, concerning 311 individuals. The list of countries concerned is as follows:

Algeria	(2 urgent appeals)
Australia	(1 urgent appeal)
Azerbaijan	(2 urgent appeals)
Bahrain	(7 urgent appeals)
Bangladesh	(1 urgent appeal)
Brazil	(1 urgent appeal)
Burundi	(2 urgent appeals)
Cambodia	(1 urgent appeal)
Cameroon	(2 urgent appeals)
Chile	(1 urgent appeal)
China	(2 urgent appeals)
Congo	(1 urgent appeal)
Egypt	(8 urgent appeals)
Equatorial Guinea	(1 urgent appeal)
Eritrea	(1 urgent appeal)
Guatemala	(1 urgent appeal)
Hungary	(1 urgent appeal)
India	(2 urgent appeals)
Iran (Islamic Republic of)	(18 urgent appeals)
Iraq	(1 urgent appeal)
Italy	(1 urgent appeal)
Japan	(1 urgent appeal)
Lebanon	(2 urgent appeals)
Libya	(2 urgent appeals)
Malawi	(1 urgent appeal)
Mauritania	(1 urgent appeal)
Mexico	(1 urgent appeal)
Myanmar	(1 urgent appeal)
Nigeria	(1 urgent appeal)
Norway	(1 urgent appeal)
Papua New Guinea	(1 urgent appeal)
Philippines	(1 urgent appeal)
Qatar	(2 urgent appeals)
Republic of Korea	(1 urgent appeal)

Romania	(1 urgent appeal)
Russian Federation	(3 urgent appeals)
Saudi Arabia	(3 urgent appeals)
Slovakia	(1 urgent appeal)
Sudan	(3 urgent appeals)
Tajikistan	(1 urgent appeal)
Turkey	(5 urgent appeals)
United Arab Emirates	(3 urgent appeals)
United States of America	(3 urgent appeals)
Uzbekistan	(1 urgent appeal)
Viet Nam	(1 urgent appeal)

33. The full text of the urgent appeals can be consulted in the joint reports on communications.[2]

34. In conformity with paragraphs 22 to 24 of its methods of work, the Working Group, without prejudging whether a detention was arbitrary, drew the attention of each of the Governments concerned to the specific case as reported and appealed to them, often jointly with other special procedure mandate holders, to take the measures necessary to ensure that the detained persons' rights to life, liberty, and physical and psychological integrity were respected.

35. When an appeal made reference to the critical state of health of certain persons or to particular circumstances, such as the failure to execute a court order for release or to give effect to a previous opinion of the Working Group seeking the release of the person, the Working Group requested that all measures necessary for the immediate release of the detained person be taken. In accordance with Human Rights Council resolution 5/2, the Working Group integrated into its methods of work the prescriptions of the Code of Conduct for Special Procedures Mandate Holders of the Human Rights Council relating to urgent appeals and has since applied them.

36. During the period under review, the Working Group also sent 41 letters of allegation and other letters to Australia, Azerbaijan, Bahrain, Bangladesh, Belarus, Belgium, the Plurinational State of Bolivia, Cambodia, Cameroon, Chad, Egypt (3), France, Haiti, Israel, Lebanon, Maldives, Malta, Mexico (2), Morocco (2), Nigeria, the Republic of Korea, the Russian Federation, Saudi Arabia (2), Thailand, Trinidad and Tobago, Turkey (4), Turkmenistan, Uganda, the United Arab Emirates, the United Republic of Tanzania, the United States of America and the Bolivarian Republic of Venezuela (2).

37. The Working Group wishes to thank those Governments that responded to its appeals and that took steps to provide it with information on the situation of the individuals concerned, especially the Governments who released such individuals. The Working Group recalls that, in paragraph 4 (f) of its resolution 5/1, the Human Rights Council requested all States to cooperate and engage fully with the United Nations human rights mechanisms.

B. Country visits

1. Requests for visits

38. During 2017, the Working Group made requests to visit Australia (7 August 2017), the Bahamas (2 March 2017), Bahrain (17 January 2017), Bhutan (1 March 2017), Cameroon (24 January 2017), Côte d'Ivoire (24 January 2017), India (6 April 2017),

[2] For communications reports of the special procedures, see www.ohchr.org/EN/HRBodies/SP/Pages/CommunicationsreportsSP.aspx.

Maldives (2 March 2017), Nepal (1 March 2017), Pakistan (30 January 2017), the Philippines (6 April 2017), Senegal (24 January 2017), Spain (6 October 2017) and Thailand (6 April 2017).

39. Reminders of its earlier requests were sent to Israel (7 August 2017), the Republic of Korea (6 October 2017), the Russian Federation (30 January 2017), Turkey (8 November 2017), Uzbekistan (18 October 2017), the Bolivarian Republic of Venezuela (15 August 2017) and Viet Nam (6 April 2017). A request for a follow-up visit was sent to Hungary (6 April 2017).

40. During the course of the year, the Working Group met with the Permanent Missions of Australia, Bahrain, Bhutan, Guatemala, Israel, Japan, Maldives, Mexico, the Republic of Korea, Spain, Thailand, Turkey and the United Arab Emirates to discuss the possibility of a country visit.

41. In 2017, the Working Group considered how it could more effectively follow up on the recommendations made during country visits and in its reports following such visits, in order to give effect to paragraph 32 of its methods of work. Among the options under consideration are the possibility of the Working Group meeting with representatives of States that it has visited to discuss follow-up to the Working Group's findings, and seeking the views of stakeholders. In the future, the Working Group intends to seek further information from States that it has visited on the implementation of the recommendations formulated in its mission reports.

2. Responses from Governments to requests for invitations for country visits

42. On 25 April 2017, the Government of Sri Lanka extended an invitation to the Working Group to conduct a country visit, which took place from 4 to 15 December 2017. The findings of the visit are contained in an addendum to the present report (A/HRC/39/45/Add.2).

43. In a note verbale dated 12 January 2017, the Permanent Mission of Guatemala proposed that the visit of the Working Group could take place in 2018. In April 2017, the Working Group met with the Permanent Mission to discuss the possibility of a country visit, and is awaiting confirmation of the dates for the visit.

44. On 14 February 2017, the Government of Senegal responded that owing to a busy schedule (including ongoing reform of the criminal justice and penitentiary system), it would not be in a position to receive a visit from the Working Group in 2017. It remained open to considering such a visit at a later stage

45. On 7 April 2017, the Permanent Mission of Kazakhstan indicated that the Working Group should send a letter identifying potential dates for the visit. A follow-up letter to that effect was sent to the Permanent Mission on 8 November 2017. The Working Group is awaiting an official response from the Government.

46. On 7 August 2017, the Working Group sent a letter to the Government of Australia requesting a country visit and specifying its purpose. In a letter dated 24 November 2017, the country's Ambassador and Permanent Representative noted his Government's agreement in principle to a visit by the Working Group. He indicated that he was not in a position to agree on a date at that stage, but noted that the Government would work towards a visit in the first quarter of 2019. His successor would be in touch with the Working Group in the second half of 2018 to discuss arrangements further.

47. In a note verbale dated 9 August 2017, the Permanent Mission of the Bahamas conveyed the willingness of the Government to receive the Working Group on its official mission. The Working Group was invited to propose two dates for the consideration of the Government. On 5 October 2017, the Working Group sent a letter to the Government advising that it accepted the invitation and proposed that the visit be conducted between May and July 2018. The Working Group is awaiting an official response from the Government.

48. On 17 August 2017, the Secretariat met with the Permanent Mission of Bhutan to clarify the modalities of country visits by the Working Group. The Working Group has

already carried out an official visit to Bhutan, in October 1994 — the first country visit of the mandate. On 16 October 2017 the Permanent Mission responded, indicating that the request for a country visit was under consideration by the Ministry of Foreign Affairs. The Government subsequently extended an invitation to the Working Group, by note verbale, to visit at a "mutually agreeable time".

49. On 27 October 2017, the Government of Hungary responded that it would not be able to organize and coordinate the requested follow-up visit due to the parliamentary elections being held in April 2018. Moreover, it might subsequently take a considerable time for the Government to be formed.

III. Thematic issues

A. Consular assistance and diplomatic protection for persons deprived of liberty

50. The Working Group has been exploring the issue of consular assistance and diplomatic protection for persons deprived of liberty.[3]

51. Consular assistance or consular protection[4] is primarily a preventive mechanism, which constitutes an important safeguard for individuals who are arrested and detained in a foreign State to ensure that international standards are being complied with. It provides detainees, as well as consular officials of the detainee's nationality (of the sending State), with certain consular rights, such as the right for consular officials to freely communicate with and have access to their detained nationals and to be informed about the arrest without delay.[5]

52. Diplomatic protection, on the other hand, is only engaged in the event of an internationally wrongful act committed by the detaining State, for example one that has caused injury to a national of the sending State (i.e. the State of nationality). It is a remedial mechanism that can be invoked where there is an inter-State dispute surrounding the internationally wrongful act. It is a right of the State to exercise diplomatic protection on behalf of its nationals, rather than a duty. A State may, however, have a limited duty to consider whether or not to exercise diplomatic protection in any given case. Although diplomatic protection is not codified, it is a principle of customary international law and is vital for the protection of human rights.[6]

53. Where dual nationals are detained by one State of nationality, it has been the general practice that one State of nationality only insists on consular assistance being provided to the dual national detained by the other State of nationality with the consent of the latter. However, nothing prohibits a State of nationality from exercising consular assistance. Similarly, the jurisprudence of international tribunals suggests that a State is not prohibited from exercising diplomatic protection in instances where dual nationals are subjected to injury by the other State of nationality. In such cases, consent from the other State of nationality is not required.

54. In its jurisprudence the Working Group has made specific findings regarding consular assistance and diplomatic protection where the detaining State has failed to

[3] The Working Group would like to express its gratitude to REDRESS (see https://redress.org) for the support it provided for the organization of an expert meeting on 27 November 2017 on this important issue, for facilitating the participation of family members of victims of arbitrary detention abroad in the meeting, and for its contribution to the substantive discussions on this topic.

[4] See, for example, the Vienna Convention on Consular Relations, arts. 5 and 36.

[5] See the Vienna Convention on Consular Relations, art. 36. See also REDRESS, "Beyond discretion: the protection of British nationals abroad from torture and ill-treatment", January 2018, pp.15–23, available at https://redress.org/wp-content/uploads/2018/01/3CADP-Report_FINAL.pdf.

[6] See REDRESS, "Beyond discretion", pp. 55–61.

provide consular rights, contrary to international standards.[7] In the majority of these cases, the right to consular assistance has been discussed along with the right to access to a lawyer under category III (violations of fair trial and due process). The Working Group has also made it clear that consular protection entails a duty to inform not only the State officials, but also the family,[8] and that consular access means "confidential consular assistance".[9]

55. There is also a link between torture and consular assistance and diplomatic protection, in terms of prevention, when there is a risk of violations occurring and as a form of redress when violations have already occurred. While responsibility for torture and ill-treatment rests with the detaining State, it should also be emphasized that consular assistance and diplomatic protection provide sending States with important tools to prevent and redress torture and ill-treatment where it occurs.

56. Consular assistance is a crucial instrument for protecting detainees from torture and ill-treatment, in particular in a context where foreign nationals are being suspected of and being detained because of alleged crimes against the State, such as terrorism, espionage or treason. While detainees are generally vulnerable to torture and ill-treatment, this vulnerability is increased in cases of detention abroad, where detainees may not understand the language, have no contacts and not be familiar with the country's legal system and traditions. Consular rights, such as the right to be informed about such rights at the moment of arrest, the right to private access by consular officials and the right to legal representation, are key to preventing torture and ill-treatment. Conversely, where such rights are not provided, or are being delayed, there is an increased risk of torture and ill-treatment.

57. The Working Group has found that non-national defendants and detainees are particularly vulnerable to violations of the right to a fair trial.[10] Access to the outside world, including through consular visits, is an important component in securing a fair trial for detainees. In respect of foreign nationals detained abroad, a meeting with a consular official may constitute the only avenue for the detainee to be informed about how to exercise his or her fair trial rights, for instance the right to habeas corpus[11] and the right to effective access to a lawyer. Consular assistance can thus contribute to a fair trial by providing detainees with effective access to a lawyer, to ensure the provision of exculpatory evidence, for example that the detained national was not involved in a particular criminal offence, to monitor trials through regular and comprehensive trial attendance, and to ensure the provision of evidence on past good character when it comes to sentencing. Consular assistance and/or diplomatic protection can thus have a significant impact on an individual who is arbitrarily detained abroad, as such instruments can secure the release and return of individuals, and prevent unfair trials and torture and ill-treatment.

58. The Working Group plans to continue to raise and integrate issues relating to consular assistance and diplomatic protection in the context of its opinions and recommendations, its country visits and its follow-up procedure.

B. Linkages between arbitrary detention and instances of torture and ill-treatment

59. Since its inception, the Working Group has been increasingly mindful of the links that exist between situations of arbitrary detention and instances of torture and ill-treatment.

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[7] See, inter alia, opinions Nos. 89/2017, 45/2017, 7/2017, 56/2016, 53/2016, 28/2016, 16/2016, 12/2016, 56/2015, 54/2015, 51/2015, 44/2015, 2/2015, 50/2014, 37/2014, 22/2014, 15/2014, 57/2013, 38/2013, 30/2013, 28/2013, 18/2013, 10/2013, 69/2012, 40/2012, 21/2012, 52/2011, 45/2011, 2/2011, 31/2010, 23/2010, 2/2010, 4/2009, 3/2009, 2/2009, 30/2008, 8/2007, 9/2007, 34/2000 and 25/2000.

[8] See opinion No. 12/2016.

[9] See opinion No. 45/2017.

[10] See footnote 16 above.

[11] See the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, A/HRC/30/37, guideline 21, para. 110.

Through its jurisprudence, both in the individual cases that come before it through the regular communications and urgent action procedures, as well as during its country visits, the Working Group has become acutely aware that the safeguards that States are required to put in place to prevent occurrences of torture and ill-treatment also have a crucial role to play in minimizing and even preventing instances of arbitrary detention.[12]

60. As an example, a significant proportion of the 94 opinions adopted by the Working Group in 2017 revealed the presence of incommunicado detention in the facts submitted by the source.[13] For the Working Group, incommunicado detention places an individual outside the protection of the law, contrary to the right to be recognized as a person before the law under article 6 of the Universal Declaration of Human Rights and article 16 of the International Covenant on Civil and Political Rights.[14] It also violates his or her right to be brought promptly before a court under article 9 (3) of the Covenant and to challenge the lawfulness of his or her detention before a court under article 9 (4) of the Covenant.[15] Judicial oversight of detention is a fundamental safeguard of personal liberty[16] and is essential in ensuring that detention in fact has a legal basis. On that basis, the Working Group consistently maintains that incommunicado detention constitutes arbitrary detention.

61. However, as the Working Group looks for measures that could effectively prevent and address instances of arbitrary detention that may arise due to incommunicado detention, it is mindful that the Committee against Torture has made it clear that incommunicado detention creates conditions that may lead to violations of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.[17] Equally, the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment has consistently argued that use of incommunicado detention is unlawful and may lead to torture and other cruel, inhuman or degrading treatment or punishment.[18] Thus, in the context of incommunicado detention, the Working Group looks at measures in place to prevent torture with a view to examining the extent to which these could assist in preventing occurrences of arbitrary detention.

62. Similarly, in its jurisprudence the Working Group frequently observes instances of extraction of confessions through ill-treatment or even torture, which are then used in proceedings against the victims who have been subjected to such treatment.[19] For the Working Group, the use of a confession extracted through ill-treatment that is tantamount, if not equivalent, to torture constitutes a breach of article 14 (3) (g) of the Covenant as well as of the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. The latter instrument, in its principle 21, specifically prohibits taking undue advantage of the situation of detention to compel confessions or incriminating statements. Confessions extracted through such means which have subsequently been admitted by judicial bodies as evidence in proceedings against the victims of such treatment have, in the view of the Working Group, led to situations of arbitrary detention due to denial of the fair trial guarantees.[20]

63. In its jurisprudence, the Working Group has also consistently argued that extraction of confessions through physical or psychological torture constitutes a violation of the

[12] See, for example, Human Rights Council resolution 31/31.

[13] See opinions Nos. 4/2017, 5/2017, 6/2017, 7/2017, 10/2017, 17/2017, 18/2017, 21/2017, 25/2017, 26/2017, 27/2017, 29/2017, 32/2017, 33/2017, 36/2017, 45/2017, 46/2017, 47/2017, 56/2017, 57/2017, 58/2017, 59/2017, 61/2017, 63/2017, 65/2017, 66/2017, 69/2017, 70/2017, 75/2017, 76/2017, 78/2017, 80/2017, 83/2017, 84/2017, 90/2017, 91/2017, 92/2017, 93/2017 and 94/2017.

[14] See, for example, opinions No. 69/2017, para. 38; No. 46/2017, para. 23; and No. 47/2017, para. 25.

[15] See, for example, opinions Nos. 79/2017, 46/2017 and 45/2017.

[16] See the United Nations Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court, para. 3.

[17] See, for example, A/54/44, para. 182 (a).

[18] See, for example, A/54/426, para. 42; and A/HRC/13/39/Add.5, para. 156.

[19] As regards 2017, for example, see opinions Nos. 3/2017, 6/2017, 10/2017, 17/2017, 21/2017, 24/2017, 29/2017, 32/2017, 33/2017, 36/2017, 46/2017, 56/2017, 59/2017, 60/2017, 61/2017, 63/2017, 69/2017, 70/2017, 78/2017, 83/2017, 92/2017 and 93/2017.

[20] See, for example, opinions Nos. 48/2016, 3/2017, 6/2017, 29/2017 and 2/2018.

international obligation of a State under article 15 of the Convention against Torture.[21] The Working Group thus reiterates that it is mindful of measures aimed at eliminating the possibilities for the extraction of confessions through ill-treatment and torture, as these could minimize the occurrence of situations of arbitrary detention.

64. In addition, during its 2017 country visits to both Argentina and Sri Lanka, the Working Group paid special attention to the implementation of the terms of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and especially to the establishment of national preventive mechanisms in those two countries.[22] Emphasizing that regular independent oversight over all places of deprivation of liberty also has a significant role to play in reducing instances of arbitrary detention, the Working Group has encouraged the respective Governments to establish national preventive mechanisms that would be comprised of entities that are fully independent of the executive, properly funded, and able to discharge their mandate effectively by having unfettered access to a wide range of places of deprivation of liberty.

65. The Working Group is liaising with the Committee against Torture, the Subcommittee on Prevention of Torture, the Special Rapporteur on torture, and the United Nations Voluntary Fund for Victims of Torture to ensure a common strategic approach to the fight against torture, thus, in turn, contributing to the eradication of instances of arbitrary detention.

66. The Working Group invites all States that have not yet done so to become parties to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and to give early consideration to signing and ratifying the Optional Protocol thereto as a matter of priority. The Working Group urges States to adopt, implement and fully comply with legal and procedural safeguards against torture and other cruel, inhuman or degrading treatment or punishment, as these contribute significantly to minimizing instances of arbitrary detention. The Working Group also urges States to ensure that the judiciary, and where relevant the prosecution, can be effective in ensuring compliance with such safeguards.

IV. Conclusions

67. During 2017, the Working Group continued its work on addressing the large number of submissions received, including through its regular communications procedure. To that end, the adoption of opinions was set as a priority, resulting in the adoption of a total of 94 opinions, which constitutes a 35 per cent increase as compared to 2016.

68. The Working Group is also working to streamline the process for receiving and responding to requests for its action, always keeping in mind the need to work as effectively and promptly as possible and to keep all parties informed.

69. The Working Group has also been refining its follow-up procedure, which was adopted in August 2016, as well as other aspects of its ability to follow up on the recommendations made in its opinions, during country visits and in the reports it produces following such visits.

70. In this context, the Working Group welcomes the increased cooperation from States under its regular communications procedure, and the fact that the States concerned provided a timely response to the Working Group's communications and requests for information in approximately 60 per cent of the cases in which the Working Group adopted an opinion in 2017 (see the table that starts on page 4 above).

71. The Working Group has also noticed an increased response rate in the context of its follow-up procedure, both from sources and from Governments, with responses having been received in more than 50 per cent of cases in which follow-up information

[21] Ibid.

[22] See A/HRC/39/45/Add.1 and A/HRC/39/45/Add.2.

had been sought from the parties. The Working Group notes, however, that an increased response rate does not necessarily imply increased enforcement of its opinions.

72. In addition, recent communications reports of the special procedure mandate holders reveal a slightly lower rate of response (just above 50 per cent) to urgent appeals sent by the Working Group alone or together with other special procedure mandate holders.

73. However, while referring to Human Rights Council resolution 33/30, in which States were reminded to cooperate fully with the Working Group, the Working Group notes with concern that this increased cooperation by States does not extend to its requests for country visits. The Working Group regrets that, despite numerous requests and the fact that many Governments have issued a standing invitation to special procedure mandate holders to visit their countries, no State has confirmed the dates for an official country visit by the Working Group in 2018.

74. Finally, the Working Group notes with grave concern that it continues to receive information, including in the context of its follow-up procedure, on reprisals suffered by individuals who have been the subject of an urgent appeal or an opinion or whose cases have given effect to a recommendation of the Working Group.

V. Recommendations

75. The Working Group reiterates the recommendations made in its previous reports.

76. The Working Group calls on Member States to continue to increase their cooperation, especially by responding positively to requests for country visits, through their responses to urgent appeals and communications, and by enforcing the Working Group's opinions, with a view to preventing and/or eradicating arbitrary detention. The Working Group urges States to continue to engage actively with its follow-up procedure with regard to the implementation of the recommendations made in its opinions.

77. With reference to Human Rights Council resolution 33/30, and in order to allow the Working Group to fulfil its mandate in an effective and sustainable manner, the Working Group encourages Member States to continue to provide it with the necessary human and material resources.

78. The Working Group also reiterates its call on the States concerned to take appropriate measures to prevent acts of reprisal against individuals who have been the subject of an urgent appeal or an opinion or whose cases have given rise to a recommendation of the Working Group, and to combat impunity by bringing perpetrators to justice and by providing victims with appropriate remedies.

Annex

Revised deliberation No. 5 on deprivation of liberty of migrants

1. The Working Group on Arbitrary Detention was established in resolution 1991/42 of the Commission on Human Rights. In its resolution 1997/50, the Commission extended and clarified the Working Group's mandate, and requested that it devote all necessary attention to reports concerning the situation of immigrants and asylum seekers who are allegedly being held in prolonged administrative custody without the possibility of administrative or judicial remedy.

2. In the light of the experience gained from its country visits carried out in that framework, in 1999 the Working Group took the initiative to develop criteria for determining whether the deprivation of liberty of asylum seekers and immigrants might be arbitrary, and to that end adopted its deliberation No. 5.[1]

3. In 2017, 20 years after it was requested to consider the deprivation of liberty of immigrants and asylum seekers, the Working Group, concerned by the rising prevalence of deprivation of liberty of immigrants and asylum seekers in recent years, recognizing the need to consolidate the developments in its own jurisprudence, taking into account the important developments in international law in this area and having received contributions, inter alia, from relevant United Nations agencies and special procedure mandate holders, has decided to revise and replace its deliberation No. 5 with the present version.

4. The Working Group wishes to emphasize in particular that 2018 marks the seventieth anniversary of the Universal Declaration of Human Rights, an instrument that recognizes that every human being is born free and equal in dignity and rights and that every person has the same rights and liberties without distinction based on race, colour, sex, language, religion, political opinion or other, national or social origin, economic position, birth, nationality or any other status. Furthermore, it proclaims that no one shall be subjected to arbitrary arrest, detention or exile and that it is the right of every person to leave any country, including his own, and to return to his country. The instrument also recognizes the right of every person to seek and enjoy in other countries asylum.

5. The present deliberation aims to consolidate the Working Group's existing practice regarding the deprivation of liberty of migrants and, as such, is representative of its existing jurisprudence.

Revised deliberation No. 5

6. For the purposes of the present deliberation, a "migrant" shall be taken to mean any person who is moving or has moved across an international border away from his or her habitual place of residence, regardless of: (a) the person's legal status; (b) whether the movement is voluntary or involuntary; (c) the cause of the movement; or (d) the duration of stay. The term shall also be taken to include asylum seekers, refugees and stateless persons.

I. The right to personal liberty and the right of migrants not to be detained arbitrarily

7. The right to personal liberty is fundamental and extends to all persons at all times and circumstances, including migrants and asylum seekers, irrespective of their citizenship, nationality or migratory status.[2] Furthermore, as stated in article 13 of the Universal

[1] E/CN.4/2000/4, annex II.

[2] See Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 3.

Declaration of Human Rights, everyone has the right to leave any country, including his own, and return to his own country.

8. The prohibition of arbitrary detention is absolute, meaning that it is a non-derogable norm of customary international law, or *jus cogens*.[3] Arbitrary detention can never be justified, including for any reason related to national emergency, maintaining public security or the large movements of immigrants or asylum seekers. This extends both to the territorial jurisdiction and effective control of a State.

II. The right to seek and enjoy asylum and the non-criminalization of migration

9. Seeking asylum is a universal human right, the exercise of which must not be criminalized.[4]

10. The irregular entry and stay in a country by migrants should not be treated as a criminal offence, and the criminalization of irregular migration will therefore always exceed the legitimate interests of States in protecting their territories and regulating irregular migration flows.[5] Migrants must not be qualified or treated as criminals, or viewed only from the perspective of national or public security and/or health.[6]

11. The deprivation of liberty of an asylum-seeking, refugee, stateless or migrant child, including unaccompanied or separated children, is prohibited.[7]

III. Exceptionality of detention in the course of migration proceedings

12. Any form of administrative detention or custody in the context of migration must be applied as an exceptional measure of last resort, for the shortest period and only if justified by a legitimate purpose, such as documenting entry and recording their claims or initial verification of identity if in doubt.[8]

13. Any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority.[9] Anyone detained in the course of migration proceedings must be brought promptly before a judicial authority, before which they should have access to automatic, regular periodic reviews of their detention to ensure that it remains necessary, proportional, lawful and non-arbitrary.[10] This does not exclude their right to bring proceedings before a court to challenge the lawfulness or arbitrariness of their detention.[11]

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[3] See general comment No. 35, para. 66.

[4] See Universal Declaration of Human Rights, art. 14; the Convention relating to the Status of Refugees; and the Protocol relating to the Status of Refugees.

[5] See A/HRC/13/30, para. 58; and A/HRC/7/4, para. 53.

[6] See A/HRC/10/21, para. 68.

[7] See A/HRC/30/37, para. 46. See also E/CN.4/1999/63/Add.3, para. 37; A/HRC/27/48/Add.2, para. 130 and A/HRC/36/37/Add.2, paras 41–42.

[8] See the Convention relating to the Status of Refugees, art. 31.

[9] See A/HRC/13/30, para. 61; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 4; E/CN.4/1999/63/Add.4, para. 51; and E/CN.4/2003/8/Add.2, para. 64 (a). See also A/HRC/13/30/Add.2, para. 79 (e).

[10] See A/HRC/30/37, para. 43; A/HRC/13/30, para. 61; and Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 11, para. 3. See also E/CN.4/2003/8/Add.2, para. 64 (a); A/HRC/13/30/Add.2, para. 79 (g); and A/HRC/16/47/Add.2, para. 120.

[11] See A/HRC/30/37, para. 43; A/HRC/13/30, para. 61; Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, Principle 11, para. 3; and E/CN.4/2006/7, para. 85. See also E/CN.4/2005/6/Add.2, para. 86; E/CN.4/2005/6/Add.3, para. 86 (d); E/CN.4/2006/7/Add.3, para. 89.

14. Detention in the course of migration proceedings must be justified as reasonable, necessary and proportionate in the light of the circumstances specific to the individual case. Such detention is permissible only for the shortest period of time, it must not be punitive in nature and must be periodically reviewed as it extends in time.[12]

15. Non-nationals, including immigrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty, shall be guaranteed access to a court of law empowered to order immediate release or able to vary the conditions of release.

16. Alternatives to detention must be sought to ensure that the detention is resorted to as an exceptional measure.[13]

17. Alternatives to detention should be realistic and must not depend upon the ability of the individual to pay for these.[14] Alternatives to detention may take various forms, including reporting at regular intervals to the authorities, community-based solutions, release on bail or other securities, or stay in open centres or at a designated place.[15] The conditions in any such open centres and other facilities must be humane and respectful of the inherent dignity of all persons.[16]

18. The application of measures alternative to detention must be reviewed by a judicial authority and alternatives to detention must not be considered as alternatives to release.[17]

19. The need to detain should be assessed on an individual basis and not based on a formal assessment of the migrant's current migration status.[18] The detention must comply with the principle of proportionality[19] and as such, automatic and/or mandatory detention in the context of migration is arbitrary.[20]

20. Detention in the course of migration proceedings must be prescribed by law, justified as reasonable, necessary and proportionate in the light of the circumstances and reassessed as it extends in time. These cumulative elements must be complied with in each individual case.[21]

21. Migration detention policies and procedures must not be discriminatory or make distinctions based on the legal conditions of the person.[22] Detaining someone solely on the basis of a distinction such as race, colour, sex, language, religion, political or other opinion, national or social origin, economic position, birth, nationality or any other status will always be arbitrary.

22. The element of reasonableness requires that the detention be imposed in pursuance of a legitimate aim in each individual case. This must be prescribed by legislation that clearly defines and exhaustively lists the reasons that are legitimate aims justifying detention.[23] Such reasons that would legitimize the detention include the necessity of

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[12] See A/HRC/30/37, para. 45; E/CN.4/2006/7, para. 85; and A/HRC/10/21, para. 75. See also opinions No. 42/2017 and No. 28/2017; A/HRC/27/48/Add.4, para. 130 (h); A/HRC/30/36/Add.3, para. 73; A/HRC/30/36/Add.1, para. 81; A/HRC/36/37/Add.1, para. 99 (a); and general comment No. 35, para. 18.

[13] See A/HRC/13/30, para. 59. See also E/CN.4/1999/63/Add.3, para. 33; A/HRC/19/57/Add.3, para. 68 (e); A/HRC/27/48/Add.2, para. 124; and A/HRC/30/36/Add.1, para. 81.

[14] See, for example, A/HRC/36/37/Add.2, paras. 28 and 30.

[15] See A/HRC/13/30, para. 65. See also A/HRC/30/36/Add.3, para. 48; E/CN.4/2003/8/Add.2, para. 64 (a) (ii); and A/HRC/36/37/Add.2, para. 92 (a) (ii).

[16] See, for example, A/HRC/33/50/Add.1, para. 72.

[17] See A/HRC/13/30, para. 65. See also A/HRC/36/37/Add.2, paras. 28 and 30.

[18] See A/HRC/30/37, para. 115.

[19] See, for example, A/HRC/19/57/Add.3, para. 68 (f) and (g); A/HRC/30/36/Add.1, para. 88; and A/HRC/36/37/Add.1, para. 99 (a).

[20] See, for example, A/HRC/36/37/Add.2, para. 92 (a); and opinion No. 42/2017.

[21] See general comment No. 35, para. 18; and A/HRC/10/21, para. 67. See also opinions No. 42/2017 and No. 28/2017.

[22] See Universal Declaration of Human Rights, arts. 2, 9, 10 and 11; and International Covenant on Civil and Political Rights, art. 9 (1).

[23] See A/HRC/13/30, para. 59; and A/HRC/10/21, paras. 67 and 82.

identification of the person in an irregular situation or risk of absconding when their presence is necessary for further proceedings.[24]

23. The element of necessity requires that the detention be absolutely indispensable for achieving the intended purpose and that no other measure less onerous exists in the individual circumstances of the person who is in an irregular migration situation.[25]

24. The element of proportionality requires that a balance be struck between the gravity of the measure taken, which is the deprivation of liberty of a person in an irregular situation, including the effect of the detention on the physical and mental health of the individual, and the situation concerned.[26] To ensure that the principle of proportionality is satisfied, alternatives to detention must always be considered.[27]

IV. Length of detention in the course of migration proceedings

25. A maximum detention period in the course of migration proceedings must be set by legislation, and such detention shall be permissible only for the shortest period of time. Excessive detention in the course of migration proceedings is arbitrary.[28] Upon the expiry of the detention period set by law, the detained person must automatically be released.[29]

26. Indefinite detention of individuals in the course of migration proceedings cannot be justified and is arbitrary.[30]

27. There may be instances when the obstacle for identifying or removal of persons in an irregular situation from the territory is not attributable to them — including non-cooperation of the consular representation of the country of origin, the principle of non-refoulement[31] or the unavailability of means of transportation — thus rendering expulsion impossible. In such cases, the detainee must be released to avoid potentially indefinite detention from occurring, which would be arbitrary.[32]

V. The right to challenge the legality of detention

28. The Basic Principles and Guidelines on Remedies and Procedures on the Right of Anyone Deprived of Their Liberty to Bring Proceedings Before a Court[33] applies to all non-nationals, including immigrants regardless of their status, asylum seekers, refugees and stateless persons, in any situation of deprivation of liberty.[34]

29. The right of anyone deprived of his or her liberty to bring proceedings before a court in order that it may decide without delay on the lawfulness of his or her detention and obtain appropriate remedies upon a successful challenge, is a self-standing human right, the absence of which constitutes a human rights violation.[35] This right applies to everyone,

[24] See A/HRC/13/30, para. 59; and general comment No. 35, para. 18.
[25] See A/HRC/7/4, para. 46. See also E/CN.4/1999/63/Add.3, para. 34; and E/CN.4/1999/63/Add.3, paras. 29 and 34.
[26] See A/HRC/30/37, para. 111.
[27] Ibid., para. 108.
[28] See, for example, opinions No. 5/2009 and No. 42/2017; E/CN.4/1999/63/Add.3, para. 35; and A/HRC/33/50/Add.1, paras. 49–50.
[29] See A/HRC/13/30, para. 61.
[30] Ibid., para. 63. See also opinions No. 42/2017 and No. 28/2017.
[31] See the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3; and the Convention relating to the Status of Refugees, art. 33.
[32] See A/HRC/13/30, para. 63; A/HRC/7/4, para. 48; and A/HRC/10/21, para. 82. See also opinion No. 45/2006.
[33] A/HRC/30/37.
[34] Ibid., para. 8.
[35] Ibid., para. 2.

including immigrants regardless of their migration status, refugees and asylum seekers and stateless persons.[36]

30. Any detention in the course of migration proceedings that makes it impossible to mount an effective challenge to the continued detention is arbitrary.[37]

VI. Respect for rights during detention in the course of migration proceedings

31. Those detained in the course of migration proceedings enjoy the same rights as those detained in the criminal justice or other administrative context, including the rights enshrined in the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment.

32. Those detained in the course of migration proceedings must be treated without discrimination based on race, colour, sex, property, birth, age, national, ethnic or social origin, language, religion, economic condition, political or other opinion, sexual orientation or gender identity, disability, nationality or any other status, or on any ground that aims at or may result in undermining the enjoyment of human rights on the basis of equality.

33. Those detained in the course of migration proceedings have the right to be informed, in writing and in a language which they understand, of the nature of and grounds for the decision to detain, the duration of detention, as well as of the possibility to challenge the legality and arbitrariness of such decision.[38]

34. All those detained in the course of migration proceedings must be properly informed of their right to seek asylum and be able to file an asylum application.[39]

35. All detained migrants must have access to legal representation and advice and interpreters, including with the view to challenging the detention order, appealing deportation decisions or preventing cases of refoulement. If necessary, access to free and effective legal aid should be ensured.[40]

36. All detained migrants from the moment of their detention and during the course of detention must be informed of the right to contact their consular representatives. If the migrant wishes to exercise that right, it is the duty of the authorities holding the migrant to facilitate such contact.[41]

37. All detained migrants must be able to communicate with the outside world and relatives, including by telephone or email.[42]

38. All detained migrants must be treated humanely and with respect for their inherent dignity. The conditions of their detention must be humane, appropriate and respectful, noting the non-punitive character of the detention in the course of migration proceedings.[43]

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[36] Ibid., para. 8.

[37] See, for example, opinions No. 42/2017 and No. 28/2017. See also *C. v. Australia* (CCPR/C/76/D/900/1999); *Baban et al. v. Australia* (CCPR/C/78/D/1014/2001); *Shafiq v. Australia* (CCPR/C/88/D/1324/2004); *Shams et al. v. Australia* (CCPR/C/90/D/1255, 1256, 1259, 1260, 1266, 1268, 1270 and 1288/2004); *Bakhtiyari v. Australia* (CCPR/C/79/D/1069/2002); *D. and E. and their two children v. Australia* (CCPR/C/87/D/1050/2002); *Nasir v. Australia* (CCPR/C/116/D/2229/2012); and *F.J. et al. v. Australia* (CCPR/C/116/D/2233/2013).

[38] See A/HRC/30/37, para. 42. See also E/CN.4/1999/63/Add.3, paras. 27–28; E/CN.4/1999/63/Add.4, paras. 49–50; A/HRC/27/48/Add.2, para. 118 (d) (i) and 119 (b); and A/HRC/10/21/Add.5, para. 76.

[39] See, for example, A/HRC/27/48/Add.2, para. 133; A/HRC/30/36/Add.3, para. 80; and A/HRC/10/21/Add.5, para. 76.

[40] See, for example, A/HRC/27/48/Add.2, para. 129; A/HRC/30/36/Add.1, para. 90; and A/HRC/33/50/Add.1, paras. 51–54.

[41] See, for example, A/HRC/7/4/Add.3, para. 100 (l); and A/HRC/27/48/Add.2, para. 95.

[42] See, for example, A/HRC/27/48/Add.2, para. 118 (d) (ii); and A/HRC/30/36/Add.3, para. 77.

[43] See A/HRC/7/4, paras. 49–50. See also E/CN.4/1999/63/Add.3, para. 30; A/HRC/27/48/Add.2, para. 121; A/HRC/30/36/Add.3, para. 75; and A/HRC/36/37/Add.1, para. 99 (c).

Detention conditions and treatment must not be such as to impede the ability to challenge the lawfulness of detention, and detention should not be used as a tool to discourage asylum applications.

39. All detained migrants must have free access to appropriate medical care, including mental health care.[44]

VII. Migrants in situations of vulnerability and/or at risk

40. Detaining children because of their parents' migration status will always violate the principle of the best interests of the child and constitutes a violation of the rights of the child.[45] Children must not be separated from their parents and/or legal guardians.[46] The detention of children whose parents are detained should not be justified on the basis of maintaining the family unit, and alternatives to detention must be applied to the entire family instead.

41. Detention of migrants in other situations of vulnerability or at risk, such as pregnant women, breastfeeding mothers, elderly persons, persons with disabilities, lesbian, gay, bisexual, transgender and intersex persons, or survivors of trafficking, torture and/or other serious violent crimes, must not take place.[47]

42. Men and women in detention should be always separated unless they are a part of an immediate family unit.

VIII. The prohibition of non-refoulement

43. The principle of non-refoulement must always be respected, and the expulsion of non-nationals in need of international protection, including migrants regardless of their status, asylum seekers, refugees and stateless persons, is prohibited by international law.[48]

IX. Detention facilities

44. The detention of asylum seekers or other irregular migrants must not take place in facilities such as police stations, remand institutions, prisons and other such facilities since these are designed for those within the realm of the criminal justice system.[49] The mixing of migrants and other detainees who are held under the remit of the criminal justice system must not take place.

45. Whether a place where those held in the course of migration proceedings is a place of detention depends on whether the individuals held there are free to leave it at will or not. If not, irrespective of whether the facilities are labelled "shelters", "guest houses", "transit centres" "migrant stations" or anything else, these constitute places of deprivation of liberty and all the safeguards applicable to those held in detention must be fully respected.[50]

46. If a State outsources the running of migration detention facilities to private companies or other entities, it remains responsible for the way such contractors carry out that delegation. The State in question cannot absolve itself of the responsibility for the way

[44] See, for example, A/HRC/27/48/Add.2, para. 118 (d) (iii); and A/HRC/30/36/Add.3, para. 75.
[45] See A/HRC/30/37, para. 46; and A/HRC/10/21, para. 60.
[46] See, for example, A/HRC/36/37/Add.2, paras. 43 and 92 (j).
[47] See, for example, A/HRC/13/30/Add.2, para. 79 (f); and A/HRC/16/47/Add.2, para. 119.
[48] See Convention against Torture, art. 3; and Convention relating to the Status of Refugees, art. 33. See also opinion No. 5/2009; A/HRC/27/48/Add.2, para. 129; and A/HRC/27/48/Add.4, para. 130 (c).
[49] See, for example, E/CN.4/1999/63/Add.3, para. 30.
[50] See A/HRC/7/4, para. 43; and A/HRC/36/37, paras. 50–56. See also A/HRC/33/50/Add.1, para. 36.

the private companies or other entities run such detention facilities, as a duty of care is owed by that State to those held in such detention.[51]

X. Access to those held in detention in the course of migration proceedings

47. The Office of the United Nations High Commissioner for Refugees, the International Committee of the Red Cross and other relevant organizations, including national human rights institutions, national preventive mechanisms and international and national non-governmental organizations, must be allowed free access to the places of detention where those detained in the course of migration proceedings are held.[52]

XI. Scope of application of the present deliberation

48. The standards restated in the present deliberation apply to all States in all situations, and factors such as the influx of large numbers of immigrants regardless of their status, asylum seekers, refugees and stateless persons cannot be used to justify the departure from these standards. The standards in the present deliberation also apply to migration detention facilities maintained by a State in the territory of another State, with both States jointly responsible for the detention.[53]

[*Adopted on 23 November 2017*]

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[51] See, for example, A/HRC/36/37/Add.2, paras. 33–36.

[52] See, for example, E/CN.4/1999/63/Add.3, para. 38; E/CN.4/1999/63/Add.4, para. 52; A/HRC/16/47/Add.2, paras. 126–128; A/HRC/19/57/Add.3, para. 68 (h); A/HRC/27/48/Add.2, para. 127; and A/HRC/30/36/Add.3, para. 80.

[53] See, for example, opinion No. 52/2014.